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LETTER DATED 3 FEBRUARY 1999 FROM THE PERMANENT REPRESENTATIVE OF IRAQ TO THE UNITED NATIONS ADDRESSED TO THE SECRETARY-GENERAL

On instructions from my Government, I have the honour to transmit to you herewith a letter dated 2 February 1999 from Mr. Mohammed Said Al-Sahaf, Minister for Foreign Affairs of the Republic of Iraq, calling attention to an example of the category "E" claims submitted to the United Nations Compensation Commission that illustrates the illegal and arbitrary measures taken by the Commission in processing unjust claims for compensation.

I should be grateful if you would have the present letter and its annex circulated as a document of the Security Council.

(Signed) Saeed H. HASAN
Ambassador
Permanent Representative

Annex

Letter dated 2 February 1999 from the Minister for Foreign Affairs of Iraq addressed to the Secretary-General

The Government of the Republic of Iraq has received from the secretariat of the United Nations Compensation Commission procedural order No. 8, dated 15 September 1998, which was issued by the Panel of Commissioners to review category "E" claims and relates to a claim filed by a company called Fahd al-Sultan's Sons and Partners for 3,061,304 Kuwaiti dinars. The Panel of Commissioners reviewing this claim established a period of 365 days with effect from 20 February 1998 for Iraq to respond to the claim. The Government of Iraq was not provided with any information on the claim other than that contained in the aforesaid procedural order.

Paragraph 4 of the procedural order states that the Panel of Commissioners received Iraq's response to its report on 14 August 1997. However, the document issued by Iraq on that date was a response to the nineteenth report of the Executive Secretary of the Governing Council of the United Nations Compensation Commission. Perusal thereof shows that it refers to category "E" claims that do not include any by the company in question. It makes reference to 22 such claims, 20 of which were filed by Kuwaiti companies and two by non-Kuwaiti construction and manufacturing firms. The report raises the same factual and legal issues as had been set forth in the Executive Secretary's eighteenth report. The issue of debts arising prior to 2 August 1990 is also raised, as is the question of whether they are to be regarded as debts of Iraq under the terms of paragraph 16 of Security Council resolution 687 (1991).

The foregoing clearly demonstrates the devious and perverse methods to which the secretariat of the Compensation Commission resorts when it considers that the Government of Iraq has received the Kuwaiti claim and that a response to it has been given, when in fact the Government of Iraq knows nothing whatever of the claim and has received no documentation relating to it other than the procedural order mentioning the name of the claimant and the sum claimed. As for Iraq's response to the nineteenth report, there was no specific and identifiable claim there to which a response could be made. There were, however, certain general issues that had been raised in the report and the Government of Iraq expressed a legal opinion in their regard, given that they were issues of a legal character relating to the interpretation of the relevant Security Council resolutions. Perusal of Iraq's response to the Executive Secretary's nineteenth report shows that it provides an elucidation of paragraph 16 of Security Council resolution 687 (1991) and of the provisions of the report of the Secretary-General of the United Nations of 2 May 1991 (S/22559). It places on record certain basic observations with regard to the aforesaid nineteenth report which are contained in two paragraphs. The first paragraph reiterates the Government of Iraq's previous urgent appeals to the effect that it was essential for Iraq to be informed of the details of the claims submitted to the Compensation Commission that were referred to in that same nineteenth report. We state that the Commission had not provided the Government of Iraq with all the documentation relating to the claims, thereby making it impossible for Iraq to form a precise, detailed and informed judgement of them. We affirm

the need for Iraq to be provided with all the documentation in the possession of the Compensation Commission concerning these complex claims. We also state in paragraph 1 of Iraq's response that the persistence of the Compensation Commission in its policy of excluding the Government of Iraq from full participation in the Commission's work would mean that the Commission would not be acquainted with the documentation and information available to the Iraqi side and that it would thus adopt its decisions on the basis of the claimant's viewpoint alone and without reference to the perspective of the Government of Iraq and the important information it could provide as the key party concerned.

In our letter conveying Iraq's response to the Executive Secretary's nineteenth report, we set forth the view of the Government of Iraq concerning direct damage by relying on the causal link between the offence and the damage caused. If Iraq's response to the report was as stated above, then how, in its procedural order No. 8 of 15 September 1998 relating to the claim for compensation submitted by Fahd al-Sultan's Sons and Partners, can the Panel of Commissioners consider that the Government of Iraq has responded to this claim?

In the light of the foregoing, the Government of Iraq urges compliance with the norms of international law and the principles of justice when such claims are being considered and the avoidance of illegal, arbitrary and perverse measures such as those taken by the United Nations Compensation Commission.

We hope that you will accord this grave matter the attention that it requires from the point of view of justice and fairness and in conformity with the norms of international law.

(Signed) Mohammed Said AL-SAHAF
Minister for Foreign Affairs
of the Republic of Iraq